No. 83 - 1819

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In the Supreme Court of the United States

October Term, 1983

ELISSA MUELLER MILLER as personal representative of the Estate of Chester H. Miller, Deceased,

and

ANN BIGGS LEWIS as personal representative of the Estate of James W. Lewis, Deceased,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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(Filed August 28, 1982)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

80-8391-CIV-JCP

ELISSA MUELLER MILLER as personal representative of the Estate of Chester H. Miller, Deceased

v.

UNITED STATES OF AMERICA

This case is a case in admiralty, cognizable under the Death on the High Seas Act. Determination of whether a tort is maritime traditionally depended upon the locality of the effect of the negligence The Supreme Court added a second test in *Executive Jet Aviation, Inc. v. City of Cleveland, Ohio,* 409 U.S. 249 (1972), that of nexus with traditional maritime activity. The case at hand meets both of these tests. Additionally, it comes within the purview of the Death on the High Seas Act as an aircraft crash into the high seas beyond one maritime league from shore. *Executive Jet,* 502. This court notes that the crash in *Executive Jet* differed from the crash in this case in that there was no nexus with traditional maritime activity, because it involved a flight by land-based aircraft within points within the continental United States. It also was not cognizable under the Death on the High Seas Act since crashes into the Great Lakes are specifically excepted by 46 U.S.C. Section 767.

46 U.S.C. Section 742 of the Suits in Admiralty Act allows suit to be brought against the United States where

if a private person were involved a proceeding in admiralty could be maintained. Thus, wrongful death actions against the United States are within the purview of the Suits in Admiralty Act. This includes both torts under the Death on the High Seas Act and under general maritime law. See *Roberts v. United States,* 498 F.2d 520, 526 (9th Circ. 1974).

Actions under the Federal Torts Claims Act and under the Suits in Admiralty Act are mutually excludable. This action may not be maintained pursuant to the Federal Torts Claim Act where it has been filed after the running of the statute of limitations set up by the Suits in Admiralty Act. It is plain to the court from the record that the plaintiff had notice that this was properly a suit in admiralty as the plaintiff filed a prior suit arising from the same incident in this very court under admiralty jurisdiction.

Accordingly, it is ORDERED and ADJUDGED that this case is DISMISSED with prejudice and the clerk is instructed to close the file.

DONE and ORDERED this 25th day of August, 1982, at Miami, Florida.

/s/ James C. Paine
James C. Paine
United States District Judge

cc: Charles A. Nugent
Richard H. Willits
Kathlynn G. Fadely
Barbara Gazeley
William Pruitt
U.S. Attorney - Miami

(Filed August 31, 1982)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

81-8176 CIV-JCP

ANN BIGGS LEWIS as personal representative of the Estate of James W. Lewis, Deceased

v.

UNITED STATES OF AMERICA

This case is a case in admiralty, cognizable under the Death on the High Seas Act. Determination of whether a tort is maritime traditionally depended upon the locality of the effect of the negligence The Supreme Court added a second test in *Executive Jet Aviation, Inc. v. City of Cleveland, Ohio,* 409 U.S. 249 (1972), that of nexus with traditional maritime activity. The case at hand meets both of these tests. Additionally, it comes within the purview of the Death on the High Seas Act as an aircraft crash into the high seas beyond one maritime league from shore. *Executive Jet,* 502. This court notes that the crash in *Executive Jet* differed from the crash in this case in that there was no nexus with traditional maritime activity, because it involved a flight by land-based aircraft within points within the continental United States. It also was not cognizable under the Death on the High Seas Act since crashes into the Great Lakes are specifically excepted by 46 U.S.C. Section 767.

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Accordingly, it is ORDERED and ADJUDGED that this case is DISMISSED with prejudice and the clerk is instructed to close the file.

DONE and ORDERED this 30th day of August, 1982, at West Palm Beach, Florida.

/s/ James C. Paine
James C. Paine
United States District Judge

cc:
Kathlynn G. FAdely
Wm. H. Pruitt